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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/881,140	06/14/2001	Razgo Lee	744.708	8101

26129 7590 08/01/2002

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EXAMINER

SMITH, JAMES G

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 08/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/881,140

Applicant(s)

LEE, RAZGO

Examiner

James G Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 10, 11, 12 and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Cunliffe (5,966,742). Cunliffe discloses a self-sizing visor having a headband made of multiple elongated rectangular pieces. The headband loop, having an inner and an outer surface, has a visor portion extending from the front portion of the bottom edge of the headband loop.

With respect to Claims 2 and 3, the headband material of Cunliffe's visor is referred to as bi-axially stretchable (claim 1).

With respect to Claim 4, Cunliffe discloses a multi-layer sweat absorbing material in the front of the visor, being attached to the headband (FIG. 1, detail 16).

With respect to Claims 10, 11, 18 and 19, Cunliffe discloses a headband portion of an adjustable cap having at least one of the edges being curvilinear and at least one of the edges being straight.

With respect to Claim 12, Cunliffe discloses an adjustable cap having headband comprised of one or more headband segments. The headband segments being connected forming an elongated four edge band. The two ends of the band are connected to form a closed loop

With respect to Claim 16, Cunliffe discloses a headband segment being sweat absorbent.

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With respect to Claim 17, Cunliffe discloses a headband comprised of multiple sections, some being bi-axially stretchable and others being non stretchable.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cunliffe (5,966,742). It would have been obvious to one of ordinary skill in the art at the time the invention was made to choose the length (viz. "short" or "long") since it has been held the general conditions of a claim are disclosed in the prior art, discovering optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cunliffe (5,966,742) as applied to claims 1-6, 10, 11, 12 and 16-19 above, and further in view of Yan (6,131,202). While Cunliffe essentially teaches the self-sizing sun visor he fails to explicitly disclose the makeup of the fabric used to make the visor. Yam discloses the preferred fabric being made up of cotton and spandex making the hat stretchable for adjusting to different head sizes. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the cap of Cunliffe with the cotton and spandex fabric of Yam to make a self-sizing hat that would be able to adjust to different head sizes. It is known in the art to use a

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fabric comprised of cotton and spandex to provide stretch to the cotton fabric for added versatility and better performance characteristics. The cotton and spandex fabrics known in the art offer a better customizable fit for the individual wearer.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cunliffe (5,966,742) in view of Fleitman (5,377,360). Cunliffe essentially teaches a self-sizing visor having a headband. However, Cunliffe fails to disclose the shape of the headband to be at its widest width at the wearer's forehead and be tapered to its smallest width in the rear of the wearer's head. Fleitman discloses a headband with a widest width being at the wearer's forehead and tapering off towards the back so that improper puckering of the fabric does not occur. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the cap of Cunliffe with the headband of Fleitman to make for a self-sizing headband that does not pucker.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cunliffe (5,966,742) in view of Dalton (4,491,985). Cunliffe essentially teaches a self-sizing visor having a headband. However, Cunliffe fails to disclose the shape of the headband being at its narrowest width at the wearer's forehead and the widest width in the rear. Dalton discloses a headband having the narrowest width at the wearer's forehead and the widest width in the rear for added comfort to the wearer. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the cap of Cunliffe with the headband of Dalton to make for a self-sizing headband that is more comfortable to the wearer.

8. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cunliffe (5,966,742). Cunliffe discloses a self-sizing headband comprised of multiple segments,

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but does not specifically disclose whether the different segments are the same color or different colors. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the cap of Cunliffe by either making the different segments of the headband the same color or different colors to enhance the aesthetic appeal of the headband.

### ***Response to Arguments***

Applicant's arguments filed 3/27/2002 have been fully considered but they are not persuasive. Examiner disagrees with applicant's attorney with respect to the fact that a headband is present in the Cunliffe patent. The headband portion is shown having two portions, details 18 and 19. These portions are combined together making a headband that is stretchable in the back to be adjustable for various head sizes. The argument that a visor portion does not extend from the front portion of the bottom edge of the headband loop is invalid. In fact, the visor portion does extend from the front portion of the headband loop and the two are attached by stitching as depicted in FIG. 3. With regards to the argument that no visor or bill is claimed in the Cunliffe reference, a visor portion is clearly shown in the reference as being a part of the hat and visors are so well known in the art that it would be obvious for a visor portion to protrude from the front of a baseball type cap. Applicant states that no means of attachment of the bill or visor are disclosed. It is well established in the art that the visor portion of a cap is commonly in the front area of and sewn opposite the front headband portion and in communication with the crown portion. Again, applicant argues there being no headband in the Cunliffe reference and specifically no bi-axially stretchable one. Examiner refers to detail 18, the rear portion of the headband which is described as being preferably bi-axially stretchable. Applicant argues that the headband does not have at least one edge curvilinear edge. FIG. 1 of the Cunliffe reference

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clearly shows when details 16 and 18 are sewn together to make the headband portion and attached to the crown portion of the cap the headband is in fact curvilinear. Applicant argues that the headband does not comprise one or more headband portions. Details 16 and 18 are sewn together in the Cunliffe reference to make the headband portion. Applicant argues that the headband segment is not sweat absorbent. In fact, column 2 lines 30-33 states, "The band has a first, front portion 16 of a multi-layer, sweat absorbent material, and a second, rear portion 18 of a single layer, stretchable material." Applicant argues that Cunliffe disclose a headband comprised of multiple sections, some being biaxially stretchable and others being non stretchable. In fact, Cunliffe discloses that a portion of the headband portion is stretchable and if a portion was having to be defined as stretchable it was to differentiate it from the other portion which would be non stretchable. If there were no non stretchable portion the stretchable portion would have been said to make up the entire headband and not specifically referred to. The arguments that the Examiner fatally undermined his argument in sections 6 and 7 were taken into consideration and it was realized that the rejection was mistakenly miswritten to include the "as applied to claims 1-7, 10, 11, 12, and 16-19 above," language. The language has been corrected.

### ***Conclusion***

1. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James G Smith whose telephone number is 703-605-4225. The examiner can normally be reached on 8:00-5:00, off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J Calvert can be reached on 703-305-1025. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-308-0758 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

JGS  
July 31, 2002

  
JOHN J. CALVERT  
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